

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT CLARKSBURG**

DEY, L.P. and DEY, INC.,

Plaintiffs,

V.

Civil Action No. 1:09-cv-87
(Judge Keeley)

TEVA PARENTERAL MEDICINES, INC.,
TEVA PHARMACEUTICALS USA, INC., and
TEVA PHARMACEUTICAL INDUSTRIES,
LTD.,

Defendants.

DEY'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF INFRINGEMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiffs Dey, L.P. and Dey, Inc. (collectively “Dey”) hereby move this court for partial summary judgment regarding infringement of Claim 65 of U.S. Patent No. 6,667,344 (“the ’344 patent”) by Defendants Teva Parenteral Medicines, Inc., Teva Pharmaceuticals USA, Inc., and Teva Pharmaceutical Industries, Ltd. (collectively, “Teva”). As is set forth more fully in its memorandum of law filed under seal contemporaneously herewith, Teva’s generic formoterol product—the subject of its pending Abbreviated New Drug Application (“ANDA”) No. 91-141—infringes each and every element of claim 65 of the ’344 patent. Neither Teva nor its retained experts have offered any opinions or proffered any evidence rebutting Dey’s infringement contentions for claim 65. Accordingly, no genuine dispute as to any material fact exists and Dey is entitled to judgment as a matter of law against Teva for infringement of Dey’s ’344 patent, claim 65.

Finally, Dey requests the opportunity for oral argument on the issues presented following completion of briefing by the parties.

Respectfully submitted this 21st day of September 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2012, I electronically filed the foregoing “Dey’s Motion for Partial Summary Judgment of Infringement” with the Clerk of the court using the CM/ECF system, which will send a copy of the same as notification of such filing to the follow attorneys via electronic mail:

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